

RECEIVED  
CENTRAL FAX CENTER**BEST AVAILABLE COPY****JAN 17 2007****REMARKS**

Reconsideration of the application, as amended, is respectfully requested.

In his office action of December 5, 2006, the Examiner reopened prosecution of the present application in lieu of filing a response to applicants' appeal brief.

Shortly thereafter, in a brief telephone call to the Examiner, applicants questioned the new grounds of rejection and inquired whether he had suggestions for overcoming the prior art of record. Applicants have amended the application accordingly, and herewith respond to the arguments made in the office action.

On page 3 of the office action, the Examiner rejected claims 1, 4, 8, 10-13, 16, 20, and 22-26 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,553,481 to Ricci.

In rejecting claim 1 and claim 13, the Examiner stated that Ricci discloses applicants' cylindrical ballistic tracer platform at 40 through 72, indicating that various claim elements are present in Ricci's embodiment.

However, the present invention is entirely different from Ricci's invention. The tracer platform disclosed in the application integrates four elements, the wad, a tracer element, a tracer projectile, and a gas seal, in a structurally sound artifact which is not part of the shot holder. Further, several claim elements of the present invention are not found in Ricci. Ricci's tracer platform at 40, 46, 48, 50, 52, 54, 56 clearly does not fill the bore between the shot holder and the propellant. (See Fig. 2 – "The stem portion 46 is comprised of side walls 48 having an outer diameter which is substantially less than the outer diameter of the shot compartment 42." (Col. 2, ll. 55-58). Ricci's empty areas provide space for the inversion of the conical portion 50, without disturbing the shot column

**BEST AVAILABLE COPY**

(Col. 4, ll. 40-57). Further Ricci's invention does not have a closed nose at 40, 46, 48. Actually, Ricci's "platform" is part of the shot holder, its bottom being base member 40. In addition, Ricci's tracer element does not fill a coaxial cavity having a lower end at the bottom of the tracer platform. Ricci's tracer element and its contents clearly occupy only a portion of the cavity (See Fig. 2). Finally, the bottom of Ricci's tracer platform is not shaped to leave a generally concave cavity. Instead, the overpowder wad 58 with base portion 60 and skirt portion 62 perform that function.

Nevertheless, applicants have amended claims 1 and 13 to more clearly define the subject matter of their invention. Support for the amendments can be found at Fig. 2, at page 8, ll. 6-11, and at Fig. 3. Claim 1 and claim 13, as amended, should be allowable over Ricci.

On page 4 of the office action, the Examiner rejected claims 4 and 16, referring to Ricci. Applicants have amended claim 1, upon which claim 4 depends, and claim 13, upon which claim 16 depends, so that they are allowable over Ricci; claims 4 and 16, therefore, should now be allowable as well.

On page 4 of the office action, the Examiner rejected claims 8 and 20, again referring to Ricci. Applicants have amended claim 1, upon which claim 8 depends, and claim 13, upon which claim 20 depends, so that they are allowable over Ricci; claims 8 and 20, therefore, should now be allowable as well.

On page 4 of the office action, the Examiner rejected claims 10 and 22, again referring to Ricci. Applicants are unable to find grooves in Ricci's Fig. 2. In any event, applicants have amended claim 1, upon which claim 10 depends, and claim 13, upon which claim 22 depends, so that they are allowable over Ricci; claims 10 and 22, therefore,

**BEST AVAILABLE COPY**

should now be allowable as well.

On page 4 of the office action, the Examiner rejected claims 11 and 23, again referring to Ricci. Applicants would argue that 56 and 64 are overlapping walls, not fins. Nonetheless, applicants have amended claim 1, upon which claim 11 depends, and claim 13, upon which claim 23 depends, so that they are allowable over Ricci; claims 11 and 23, therefore, should now be allowable as well.

On page 4 of the office action, the Examiner rejected claims 12 and 24, again referring to Ricci. Applicants would argue that the open spaces proximate 46 through 56 are not orifices. Nonetheless, applicants have amended claim 1, upon which claim 12 depends, and claim 13, upon which claim 24 depends, so that they are allowable over Ricci; claims 12 and 24, therefore, should now be allowable as well.

On page 4 of the office action, the Examiner rejected claims 25 and 26, again referring to Ricci. Applicants would point out that Ricci element 76 has nothing to do with making the tracer element inseparable from the ballistic tracer platform. In fact, 76 is a spacer member, while the process of interference fitting occurs during the machining or manufacturing process. Nonetheless, as pointed out previously, applicants have amended claim 1, upon which claim 25 depends, and claim 13, upon which claim 26 depends, so that they are allowable over Ricci; claims 25 and 26, therefore, should now be allowable as well.

On page 5 of the office action, the Examiner rejected claims 2 and 14 under 35 U.S.C. §103(a) as being unpatentable over Ricci as applied to claims 1 and 13 above, and further in view of U.S. Patent 1,457,337 to Barrows. Applicants would point out that, if the pyrotechnic material tracer element of Barrows were added to the device of Ricci, one of two things would happen: (1) no combustion would occur because Ricci provides no

**BEST AVAILABLE COPY**

means for the pyrotechnic material of Barrows to be in contact with the burning propellant; or (2) the pyrotechnic material would get wet and could not be ignited even if it were in contact with the burning propellant. Nonetheless, applicants have amended claim 1, upon which claim 2 depends, and claim 13, upon which claim 14 depends, so that they are allowable over Ricci; claims 2 and 14, therefore, are not obvious and should be allowable as well.

On page 5 of the office action, the Examiner rejected claim 3 under 35 U.S.C. §103(a) as being unpatentable over Ricci, as modified by Barrows as applied to claim 2, and further in view of U.S. Patent No. 6,694,887 to Diller. Applicants urge the same arguments stated above for the allowance of claim 2. Since no combustion of the pyrotechnic material would occur, there would be no need to add the fire-suppressing agent of Diller! Nonetheless, applicants have amended claim 1, upon which claim 2 depends, from which claim 3 depends, so that claims 1 and 2 are allowable over Ricci; claim 3, therefore, is not obvious and should be allowable as well.

On page 5 of the office action, the Examiner rejected claim 15 under 35 U.S.C. §103(a) as being unpatentable over Ricci, as applied to claim 13 (14?), and further in view of U.S. Patent No. 6,694,887 to Diller. Applicants urge the same arguments stated above for the allowance of claim 14. Since no combustion of the pyrotechnic material would occur, there would be no need to add the fire-suppressing agent of Diller! Nonetheless, applicants have amended claim 13, upon which claim 14 depends, from which claim 15 depends, so that claims 13 and 14 are allowable over Ricci; claim 15, therefore, is not obvious and should be allowable as well.

On page 6, the Examiner rejected claims 5 and 17 under 35 U.S.C. §103(a) as being

**BEST AVAILABLE COPY**

unpatentable over Ricci, as applied to claim 1 or 13, and further in view of U.S. Patent No. 3,262,390 to Cowles, *et al.* Applicants have amended claim 1, upon which claim 5 depends, and claim 13, upon which claim 17 depends, so that they are allowable over Ricci. Therefore, claims 5 and 17 are not obvious, and should be allowable as well.

On page 6, the Examiner rejected claims 6 and 18 under 35 U.S.C. §103(a) as being unpatentable over Ricci as modified by Cowles *et al.* as applied to claims 5 or 17, and further in view of U.S. Patent No. 6,694,887 to Diller. Applicants have amended claims 1 and 13, upon which claims 5 and 17, respectively, depend, to be allowable over Ricci. Therefore, claims 5 and 17 should now be allowable, and claims 6 and 18, which depend from claims 5 and 17, respectively, are not obvious, and should be allowable as well.

On page 7, the Examiner rejected claims 7 and 19 under 35 U.S.C. §103(a) as being unpatentable over Ricci as applied to claim 1 or 13, and further in view of U.S. Patent No. 4,841,866 to Miesner. Applicants have amended claims 1 and 13, upon which claims 7 and 19 respectively, depend, so to be allowable over Ricci. Therefore, claims 7 and 19 are not obvious, and should be allowable as well.

On page 7, the Examiner rejected claims 9 and 21 under 35 U.S.C. §103(a) as being unpatentable over Ricci as applied to claim 1 or 13, and further in view of FR Patent No. 2598213. Applicants would point out that nothing in the French patent suggests its combination with a tracer platform; instead, the French patent describes a rifle cartridge, apparently used for self-defense. In any event, applicants have amended claims 1 and 13, upon which claims 9 and 21, respectively, depend, to be allowable over Ricci. Therefore, claims 9 and 21 are not obvious, and should be allowable as well.

**BEST AVAILABLE COPY**

In light of the foregoing arguments, and upon entry of the amendments, allowance of claims 1 through 26 should be in order and is respectfully requested.

Date: January 17, 2007

Respectfully submitted,

Mary J. Gaskin  
Mary J. Gaskin  
Patent Attorney for applicants  
Registration No. 30,381  
2170 Buckthorne Pl., Suite 220  
The Woodlands, TX 77380  
Phone: (281) 363-9121  
Fax: (281) 363-4066

cc: Mr. James Dunnam  
Mr. Mauricio Quintana

C:\A&G\Patents\dunnam\amdrnt4